



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 54

[WC Docket No. 18-89; FCC 21-26; FRS 17535]

Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the document, the Commission seeks comment on several proposals to modify its Secure and Trusted Communications Networks Reimbursement Program (Reimbursement Program) rules to help protect the safety and security of U.S. communications networks. The proposals seek to modify these rules to align with the Consolidated Appropriations Act of 2021 (CAA), which appropriated \$1.895 billion to remove, replace, and dispose of communications equipment and services that pose a national security threat. Specifically, the Commission seeks comments on a proposal to raise the cap on eligibility for participation in the Reimbursement Program to providers of advanced communications service with 10 million or fewer customers and modifying the scope of the equipment and services eligible under the Reimbursement Program to align with the July 30, 2020 orders designating Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) as national security threats.

DATES: Comments are due on or before [INSERT DATE 21 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], and reply comments are due on or before [INSERT DATE 35 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this document, you should advise the contact listed in the following as soon as possible.

ADDRESSES: Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this

document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. Due to the COVID-19 pandemic, the Commission closed its hand-delivery filing location at FCC Headquarters effective March 19, 2020. As a result, hand or messenger delivered filings in response to this Notice of Proposed Rulemaking will not be accepted. Parties are encouraged to take full advantage of the Commission's various electronic filing systems for filing applicable documents. Except when the filer requests that materials be withheld from public inspection, any document may be submitted electronically through the Commission's ECFS. Persons that need to submit confidential filings to the Commission should follow the instructions provided in the Commission's March 31, 2020 public notice regarding the procedures for submission of confidential materials. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with § 1.49 and all other applicable sections of the Commission's rules. The Commission directs all interested parties to

include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to use a table of contents, regardless of the length of their submission. The Commission also strongly encourages parties to track the organization set forth in the Notice of Proposed Rulemaking in order to facilitate the Commission's internal review process.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

FOR FURTHER INFORMATION CONTACT: For further information, please contact Brian Cruikshank, Competition Policy Division, Wireline Competition Bureau, at Brian.Cruikshank@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Notice of Proposed Rulemaking* (FNPRM) in WC Docket No. 18-89, adopted on February 17, 2021, and released on February 18, 2021. The full text of this document is available for public inspection on the Commission's website at: <https://docs.fcc.gov/public/attachments/FCC-21-26A1.pdf>.

I. INTRODUCTION

1. In this proceeding, the Commission takes steps to advance Congressional and Commission objectives to secure the nation's communications networks. Through the CAA, Congress appropriated \$1.9 billion to the Commission to implement the Secure and Trusted Communications Networks Act of 2019 (Secure Networks Act), of which \$1.895 billion must be used to remove and replace communications equipment and services that pose a national security risk and reimburse eligible providers for the cost of doing so. The FNPRM proposes to modify the Commission's rules consistent with the CAA to expedite removal of harmful equipment and services from our nation's communications networks.

2. In particular, the Commission proposes to raise the cap on eligibility for participation in the Reimbursement Program consistent with the requirements of the CAA. The Commission also proposes to modify the acceptable use of reimbursement funds and to amend its rules to allow recipients to use reimbursement funds to remove, replace, or dispose of equipment or services that

were purchased, rented, leased, or otherwise obtained on or before June 30, 2020. The Commission proposes to replace the prioritization scheme adopted in the Commission's *Supply Chain Second Report and Order*, 86 FR 2904, January 13, 2021, with the prioritization categories set forth in the CAA. Finally, the Commission takes this opportunity to align the definition of "provider of advanced communications service" in its rules with the broader definition set forth in the CAA.

3. Now more than ever, the stability of the U.S. economy depends on the reliability, security, and integrity of the nation's networks. The COVID-19 pandemic has increased our nation's reliance on the Internet, and the rapid shift to online work, school, and health care has elevated the risk of cyber threats to our country. Moreover, the damage from recent and highly sophisticated supply chain attacks, such as the SolarWinds software breach, has further emphasized the need for a multifaceted and strategic approach to protecting our networks from all threats. The targeted actions the Commission takes in this document are consistent with congressional efforts in the CAA to hasten the removal of insecure equipment and services from our networks, which is an important element of secure communications.

II. THIRD FURTHER NOTICE OF PROPOSED RULEMAKING

4. The Commission seeks comment on how to incorporate the provisions of the CAA into the Commission's rules. Specifically, the Commission seeks comment on changes to its rules regarding eligibility for participation in the Reimbursement Program, acceptable uses of Reimbursement Program disbursements, the eligibility of certain equipment and services for the Reimbursement Program, and a prioritization paradigm in the event applications for the Reimbursement Program exceed the \$1.895 billion appropriated by Congress.

5. The Commission proposes to raise the cap on eligibility for participation in the Reimbursement Program to providers of advanced communications services with 10 million or fewer customers and seek comment on this proposal. Prior to enactment of the CAA, section 4(b)(1) of the Secure Networks Act restricted eligibility under the Reimbursement Program to providers of advanced communication service with two million or fewer customers, and in the *Supply Chain Second Report and Order*, the Commission so restricted the program. In the CAA, however, Congress amended section

4(b)(1) of the Secure Networks Act to increase the eligibility criteria to those providers with 10 million or fewer customers. The Commission proposes to change its rules and allow providers with 10 million or fewer customers to participate in the Reimbursement Program. The Commission seeks comment on the proposal and any implications that it may have for participation in the Reimbursement Program.

6. The Commission next proposes to modify the acceptable use of Reimbursement Program funds to include only the removal, replacement, and disposal of equipment and services subject to the final designations of Huawei and ZTE (collectively, the *Designation Orders*), consistent with the CAA.

7. Before it was amended by the CAA, section 4(c) of the Secure Networks Act specified that a participant in the Reimbursement Program may only use Reimbursement Program funding to remove, replace, and dispose of “covered communications equipment or services” published on the list of covered communications equipment and services (Covered List). In the *Supply Chain Second Report and Order*, the Commission adopted a rule prohibiting Reimbursement Program funding recipients from “using reimbursement funds to remove, replace, or dispose of covered communications equipment or service purchased, rented, leased, or otherwise obtained after these statutory cutoff dates.” The *Supply Chain Second Report and Order*, consistent with the Secure Networks Act before amendment, defined covered communications equipment or services as those published on the Covered List. To be published on the Covered List, equipment and services must fulfill three requirements. First, they must be communications equipment, which the Commission defined in the *Supply Chain Second Report and Order* as all equipment and services used in fixed and mobile broadband networks, provided they include or use electronic components. Second, the equipment and services must be identified as posing “an unacceptable risk to the national security of the United States or the security and safety of United States persons” to by specifically enumerated sources listed in section 2(c) of the Secure Networks Act. Finally, the equipment and services must be capable of the criteria in section 2(b)(2)(A)-(C) of the Secure Networks Act. On the other hand, the *Designation Orders* encompassed *all* equipment and services produced or provided by Huawei and ZTE. In the *Supply Chain Second Report and Order*, the Commission acknowledged that some equipment and services covered by the *Designation Orders*

would not be eligible for reimbursement, even though they were subject to the Universal Service Fund (USF) prohibition in § 54.9 of the Commission's rules.

8. In section 901 of the CAA, however, Congress amended section 4(c) of the Secure Networks Act to limit the use of reimbursement funds:

solely for the purposes of permanently removing covered communications equipment or services purchased, rented, leased or otherwise obtained as defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19-121; WC Docket No. 18-89; adopted November 22, 2019) . . . or as determined to be covered by both the process of the [Supply Chain] First Report and Order and the Designations Orders of the Commission on June 30, 2020 (DA 20-690; PS Docket No. 19-351; adopted June 30, 2020) (DA 20-691; PS Docket No. 19-352; adopted June 30, 2020).

9. The Commission believes this amendment demonstrates Congressional intent to change the scope of equipment and services eligible for reimbursement from the equipment and services on the Covered List to the equipment and services subject to the *Designation Orders*. The Commission seeks comment on this interpretation. Do the amendments revise the eligibility criteria for reimbursement such that all equipment and services produced or provided by Huawei and ZTE are now eligible for reimbursement, consistent with the scope of § 54.9 of the Commission's rules? Would limiting the use of Reimbursement Program funds solely for the purposes of removing, replacing, or disposing of communications equipment or services produced or provided by Huawei or ZTE or their subsidiaries, parents, and affiliates align with the language of the CAA? Consistent with the Commission's reasoning in the *Supply Chain First Report and Order* 85 FR 230, January 3, 2020, would reimbursement for all Huawei and ZTE equipment better ensure the security of U.S. communications networks than a narrower scope of reimbursement? After the amendments, are equipment or services published on the Covered List pursuant to section 2 of the Secure Networks Act but manufactured by companies not subject to the *Designation Orders* eligible for reimbursement? If other companies are designated as posing a national security threat to the integrity of communications networks or the communications

supply chain between now and the conclusion of the Reimbursement Program, would those companies' equipment and services be eligible under the Reimbursement Program?

10. The Commission seeks comment on alternative interpretations. Did Congress intend to limit the use of Reimbursement Program funds to removal, replacement, and disposal of equipment and services subject to both the *Designation Orders* and the Covered List, rather than including all equipment and services subject to the *Designation Orders*? Are there other potential interpretations of the statutory language?

11. *Remove-and-Replace Rule.* The Commission also proposes to modify the remove-and-replace rule adopted by the Commission in the *Supply Chain Second Report and Order* to change the scope of the equipment and services covered from those on the Covered List to those subject to the *Designation Orders*. The Commission seeks comment on the proposal.

12. In adopting the remove-and-replace rule in the *Supply Chain Second Report and Order*, the Commission explained that it intended to align the scope of equipment and services subject to the remove-and-replace rule contained in § 54.11 of the Commission's rules with the scope of equipment and services eligible for reimbursement under the Reimbursement Program. As the CAA appears to modify the equipment and services eligible for reimbursement from those on the Covered List to those subject to the *Designation Orders*, the Commission proposes to accordingly revise the equipment and services subject to removal to encompass all equipment and services produced or provided by Huawei and ZTE. To do so would be consistent with the Commission's findings in the *Supply Chain First Report and Order* about the potential vulnerabilities of all types of equipment. Are there other aspects of the remove-and-replace rule that should be modified in light of the CAA or other considerations?

13. The Commission proposes to amend its rules to allow Reimbursement Program recipients to use such funds to remove, replace, or dispose of any equipment or services that was purchased, rented, leased, or otherwise obtained on or before June 30, 2020. The Commission seeks comment on the proposal.

14. Section 4(c)(2)(A) of the Secure Networks Act prohibited Reimbursement Program recipients from using such funds to "remove, replace, or dispose of any covered communications

equipment or service purchased, rented, leased, or otherwise obtained on or after, in the case of covered any communications equipment or service that is on the initial list published under section 2(a), August 14, 2018, or in the case of any covered communications equipment that is not on the initial list published under section 2(a), the date that is 60 days after the date on which the Commission places such equipment or service on the list” In the *Supply Chain Second Report and Order*, the Commission adopted a rule prohibiting Reimbursement Program funding recipients from “using reimbursement funds to remove, replace, or dispose of covered communications equipment or service purchased, rented, leased, or otherwise obtained after these statutory cutoff dates.”

15. In the CAA, Congress amended section 4(c)(2)(A) of the Secure Networks Act to prohibit Reimbursement Fund recipients from using such funds to “remove, replace, or dispose of any covered communications equipment or service purchased, rented, leased, or otherwise obtained on or after publication of the [*Supply Chain First Report and Order*]; or in the case of any covered communications equipment that only became covered pursuant to the *Designations Orders*, June 30, 2020” Consistent with the statutory language and the statutory language discussed in this document that appears to make all equipment and services subject to the *Designation Orders* eligible for reimbursement, the Commission proposes to amend its rules to make all equipment and services obtained on or before June 30, 2020 to be eligible for reimbursement. Are there are other potential interpretations of this language

16. The Commission proposes to replace the prioritization scheme adopted in the *Supply Chain Second Report and Order* with the prioritization categories adopted in the CAA. The Commission seeks comment on that proposal. Additionally, the Commission seeks comment on whether it can further prioritize reimbursement within the prioritization subcategories.

17. Before enactment of the CAA, the Secure Networks Act was silent on whether or how reimbursement funds should be prioritized in the event requests for reimbursement funding exceeded the appropriated money available for such reimbursement. In the *Supply Chain Second Report and Order*, the Commission established a “prioritization paradigm in the event the estimated costs for replacement submitted by the providers during the initial or any subsequent filing window in the

aggregate exceed the total amount of funding available as appropriated by Congress for reimbursement requests.” The Commission adopted a scheme that first allocates funding to eligible providers that are ETCs subject to a remove-and-replace requirement under the Commission’s rules and, if funding is insufficient to meet the total demand from that group of ETCs, the program will prioritize funding for transitioning the core networks of these eligible providers before allocating funds to non-core network related expenses. If, however, funding is still available after all demand from ETCs in the first category is satisfied, the Commission’s rules allocate funding to non-(eligible telecommunications carriers) ETCs eligible providers, prioritizing those non-ETCs that provided cost estimate data in response to the Commission’s Supply Chain Security Information Collection over other non-ETCs. Finally, the Commission’s rules further prioritize funding for core network transition costs over non-core network transition costs within each non-ETC category.

18. The CAA, however, established a prioritization paradigm for the Reimbursement Program that differs from the model the Commission adopted in the *Supply Chain Second Report and Order*. Under the CAA, “the Commission shall allocate sufficient reimbursement funds first, to approved applications that have 2,000,000 or fewer customers . . . , [then] to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services . . . , [then] to any remaining applicants determined to be eligible for reimbursement under the [Reimbursement] Program.”

19. The Commission proposes to adopt the CAA’s prioritization scheme as an overarching replacement to the prioritization scheme adopted in the *Supply Chain Second Report and Order*. Thus, the Commission proposes to first allocate funds to approved applications with 2 million or fewer customers. Once applications meeting that requirement are funded, the Commission proposes to allocate funds to approved applicants that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband services. After those applicants are fully funded, the Commission proposes to allocate funds to any remaining applicants determined to be eligible for reimbursement under the Reimbursement Program. The Commission seeks comment on this proposal.

20. While the Commission proposes to change the three reimbursement prioritization categories consistent with the CAA, the CAA is silent on how the Commission should further prioritize funding within the three main categories. If funding within a particular category is insufficient to meet demand, how should the Commission allocate funding within that particular category? Can the Commission still prioritize certain equipment or providers within an individual category if funding is insufficient to fund all applications within that prioritization category? When the Commission adopted the prioritization scheme in the *Supply Chain Second Report and Order*, the Commission found that replacing the core network is the logical first step in a network transition and may have the greatest impact on eliminating a national security risk from the network. This is unlikely to have changed since the Commission adopted the *Supply Chain Second Report and Order* on December 10, 2020. The Commission seeks comment on whether the language of the CAA allow the Commission to maintain a prioritization for core network transition costs over non-core network transitions costs the categories established by the CAA? The Commission also seeks comment on reducing funding on a pro rata basis for all recipients within a prioritization category as defined by the CAA. Are there any other methods of allocating funding equitably across a specific category if remaining funding is insufficient to fund all of the remaining requests?

21. Similarly, the Commission seeks comment on other potential sub-prioritization categories. Recognizing the national security threats to communications networks or the communications supply chain that remain even while the Commission works to remove covered equipment and services, the Commission seeks comment on prioritizing, within each category, the removal and reimbursement of certain equipment or services at particular locations identified as posing an elevated national security risk by the Commission or other federal agencies or interagency bodies as defined in section 2(c) of the Secure Networks Act. The Commission believes prioritizing equipment and services at particular locations with an elevated national security risk is consistent with the CAA, because the Commission would only prioritize equipment and services within the same prioritization category. Building on this idea, can the Commission prioritize equipment and services at locations that pose a heightened national security risk in a lower priority category ahead of any equipment and

services in a higher prioritization category? Are there other methods for prioritizing any other equipment or services within a reimbursement prioritization category? The Commission seeks comment on any other methods consistent with the CAA prioritization structure.

22. In the Secure Networks Act, Congress defined “provider of advanced communications service” as “a person who provides advanced communications service to United States customers.” Congress amended this definition in the CAA to “include[] . . . accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service as defined in § 27.4 of the Commission’s rules,” and “health care providers and libraries providing advanced communications service.” In the *Supply Chain Second Report and Order*, the Commission explained that “for purposes of the Reimbursement Program, a school, library, or health care provider, or consortium thereof, may also qualify as a provider of advanced communications service, and therefore be eligible to participate in the Reimbursement Program . . .”

23. Consistent with the CAA, the Commission proposes to change the definition of provider of advanced communications service to incorporate the new, broader definition. The Commission seeks comment on this proposal. While the Commission believes its interpretation in the *Supply Chain Second Report and Order* is consistent with the amendments to the Secure Networks Act, the Commission proposes to update its rules to follow Congress’ direction in the CAA. The Commission also seeks comment on whether the term “educational broadband service as defined under Part 27 of the Commission’s rules” is intended to solely reference licensees in the Commission’s Education Broadband Service, or whether this term has a different meaning. Consistent with the *Supply Chain Second Report and Order*, the Commission proposes to modify the definition of “provider of advanced communications service” only for purposes of the Reimbursement Program and not for any other provision of the Secure Networks Act or the Commission’s rules. The Commission seeks comment on this proposal.

24. Finally, the Commission seeks comment on whether the amendments to the Secure Networks Act enacted by Congress in the CAA require revision to any other provisions or rules adopted by the Commission in the *Supply Chain Second Report and Order*. Are other changes to the Commission’s rules mandated or necessary as a result of the CAA?

25. The FNPRM seeks comment on proposals to implement the requirements of the CAA, and the Commission has no discretion to ignore such congressional direction. In addition, the CAA provides funding to reimburse eligible providers for their costs to remove and replace harmful equipment and services from their networks. Moreover, the Commission already completed an Information Collection to determine the costs to ETCs to remove and replace Huawei and ZTE equipment and services from their networks. Accordingly, the Commission tentatively concludes that its proposals in the FNPRM will impose no additional costs to those who are required to participate in the reimbursement program. The Commission seeks comment on this tentative conclusion.

III. PROCEDURAL MATTERS

26. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, will invite the general public and the Office of Management and Budget to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

27. *Initial Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act of 1980, as amended (RFA), which has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the FNPRM. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM provided on the first page of the item. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.

28. Consistent with the Commission's obligation to be responsible stewards of the public funds used in the USF programs and increasing concern about ensuring communications supply chain

integrity, the FNPRM proposes and seeks comment on rules to implement Division N, Title IX, section 901 of the CAA and their applicability to the Commission's ongoing efforts to secure the communications supply chain.

29. Specifically, the Commission proposes to amend the rules regarding provider eligibility for participation in the Reimbursement Program, the equipment and services eligible for Reimbursement Program disbursements, and the prioritization of Reimbursement Program Funds.

30. The proposed action is authorized under sections 4(i), 201(b), 214, 254, 303(r), 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201(b), 214, 254, 303(r), 403 and 503, Division N, Title IX, section 901 of the CAA, 47 U.S.C. 1603 and 1608.

31. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA).

32. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* The Commission's actions, over time, may affect small entities that are not easily categorized at present. The Commission therefore describes here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA's Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses.

33. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of Aug 2016, there were approximately 356,494 small organizations based on registration and tax data filed by nonprofits with the Internal Revenue Service (IRS). Data from the Urban Institute, National Center for Charitable Statistics (NCCS) reporting on nonprofit organizations registered with the IRS was used to estimate the number of small organizations. Reports generated using the NCCS online database indicated that as of August 2016 there were 356,494 registered nonprofits with total revenues of less than \$100,000. Of this number, 326,897 entities filed tax returns with 65,113 registered nonprofits reporting total revenues of \$50,000 or less on the IRS Form 990-N for Small Exempt Organizations and 261,784 nonprofits reporting total revenues of \$100,000 or less on some other version of the IRS Form 990 within 24 months of the August 2016 data release date. You can access <http://nccsweb.urban.org/tablewiz/bmf.php> where the report showing this data can be generated by selecting the following data fields: Show: “Registered Nonprofit Organizations”; By: “Total Revenue Level (years 1995, Aug to 2016, Aug)”; and For: “2016, Aug” then selecting “Show Results.”

34. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments - independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, the Commission estimates that at least 48,971 entities fall into the category of “small governmental jurisdictions.” Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). There were 2,105 county governments with

populations less than 50,000. This category does not include subcounty (municipal and township) governments. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000. There were 12,040 independent school districts with enrollment populations less than 50,000. While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category. This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations Tables 5, 6, and 10.

35. Small entities potentially affected by the proposals herein include eligible schools and libraries, eligible rural non-profit and public health care providers, and the eligible service providers offering them services, including telecommunications service providers, Internet Service Providers (ISPs), and vendors of the services and equipment used for telecommunications and broadband networks.

36. The FNPRM proposes rules that: raise the eligibility threshold in the Reimbursement Program for providers of advanced communications service from two million to ten million customers, restrict the use of Reimbursement Program funds to equipment or services produced or provided by any company deemed to pose a national security threat to the integrity of communications networks or the communications supply chain, make equipment and services obtained on or before June 30, 2020 eligible for reimbursement, and revise a prioritization scheme to award Reimbursement Program funding. The Commission seeks comment on these proposals, and their likely costs and benefits, as well as on alternative approaches and any other steps it should consider taking.

37. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting

requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

38. In compliance with the CAA, the FNPRM proposes to increase the pool of eligible participants in the Reimbursement Program to all providers of advanced communications services with ten million or fewer customers, limit the use of Reimbursement Program funding to remove, replace, and dispose of to allow Reimbursement Program allocations to be used to remove, replace, and dispose of equipment or services produced or provided by any company deemed to pose a national security threat to the integrity of communications networks or the communications supply chain, make equipment and services obtained on or before June 30, 2020 eligible for reimbursement, and revise the prioritization scheme to prioritize advanced communications service providers with two million or fewer customers, then public or private non-commercial educational institutions providing their own facilities-based educational broadband services, and then to any remaining eligible applicants.

39. The Commission expects to take into account the economic impact on small entities, as identified in comments filed in response to the FNPRM and this IRFA, in reaching the Commission’s final conclusions and promulgating rules in this proceeding. The FNPRM generally seeks comment on how to adopt enacted legislation that mandates action by the Commission and seeks specific comment on how to mitigate the impact on small entities.

40. *Ex Parte Presentations.* This proceeding is a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments

already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

IV. ORDERING CLAUSES

41. Accordingly, IT IS ORDERED that, pursuant to the authority contained in sections 4(i), 201(b), 214, 254, 303(r), 403, and 503 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201(b), 214, 254, 303(r), 403 and 503, sections 2, 3, 4, and 9 of the Secure Networks Act, 47 U.S.C. 1601, 1602, 1603, and 1608, Division N, Title IX, sections 901 and 906 of the CAA, and §§ 1.1 and 1.412 of the Commission's rules, 47 CFR 1.1 and 1.412, the FNPRM IS ADOPTED.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Civil rights, Claims, Communications, Communications common carriers, Communications equipment, Cuba, Drug abuse, Environmental impact statements, Equal access to justice, Equal employment opportunity, Federal buildings and facilities, Government employees, Historic preservation, Income taxes, Indemnity payments, Individuals with disabilities, Internet, Investigations, Lawyers, Metric system, Penalties, Radio, Reporting and recordkeeping requirements, Security measures, Satellites, Telecommunications, Telephone, Television, Wages.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries,
Puerto Rico, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone,
Virgin Islands.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary

Proposed Rules

For the reasons discussed in the preamble, the Federal Communication Commission proposes to amend 47 parts 1 and 54 as follows:

PART 1 – PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

2. Amend § 1.50004 by revising paragraphs (a) introductory text, (a)(1) and (2), (f), and paragraphs (i)(1)(i) and (ii) and adding (q) to read as follows:

§ 1.50004 Secure and Trusted Communications Networks Reimbursement Program.

(a) *Eligibility.* Providers of advanced communications service with ten million or fewer customers are eligible to participate in the Reimbursement Program to reimburse such providers solely for costs reasonably incurred for the permanent replacement, removal, and disposal of covered communications equipment or services:

(1) As defined in the Report and Order of the Commission in the matter of Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (FCC 19-121; WC Docket No. 18-89; adopted November 22, 2019 (in this section referred to as the ‘Report and Order’); or

(2) As determined to be covered by both the process of the Report and Order and the Designation Orders of the Commission on June 30, 2020 (DA 20-690; PS Docket No. 19-351; adopted June 30, 2020) (DA 20-691; PS Docket No. 19-352; adopted June 30, 2020) (in this section collectively referred to as the ‘Designation Orders’);

(f) *Prioritization of support.* The Wireline Competition Bureau shall issue funding allocations in accordance with this section after the close of a filing window. After a filing window closes, the Wireline Competition Bureau shall calculate the total demand for Reimbursement Program support submitted by

all eligible providers during the filing window period. If the total demand received during the filing window exceeds the total funds available, then the Wireline Competition Bureau shall allocate the available funds consistent with the following priority schedule:

<p>Priority 1</p>
<p>Advanced communication service providers with 2 million or fewer customers.</p>
<p>Priority 2</p>
<p>Advanced communications service providers that are accredited public or private non-commercial educational institutions providing their own facilities-based educational broadband service, as defined in 47 CFR 27.4.</p>
<p>Priority 3</p>
<p>Any remaining approved applicants determined to be eligible for reimbursement under the Program.</p>

(i) ***

(1) ***

(i) On or after publication of the Report and Order; or

(ii) In the case of any covered communications equipment that only became covered pursuant to the Designation Orders, June 30, 2020; or

(q) *Provider of advanced communications services*. For purposes of the Secure and Trusted Communications Networks Reimbursement Program, provider of advanced communications services is defined as:

(1) A person who provides advanced communications service to United States customers; and includes:

(i) Accredited public or private non-commercial educational institutions, providing their own facilities-based educational broadband service, as defined in 47 CFR 27.4; and

(ii) Health care providers and libraries providing advanced communications service.

(2) [RESERVED]

PART 54 – UNIVERSAL SERVICE

3. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302, unless otherwise noted.

4. Amend § 54.11 by revising paragraph (b) to read as follows:

§ 54.11 Requirement to remove and replace.

(b) For purposes of paragraph (a) of this section, covered communications equipment or services means any communications equipment or service produced or provided by a covered company posing a

national security threat to the integrity of communications networks or the communications supply chain.

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